

MINUTES
of the First Meeting of the
Surgical Technologists' Technical Review Committee

November 19, 2015
9:00 a.m. to Noon
Lower Level Conference Room "F"
The Nebraska State Office Building, Lincoln, NE

Members Present

Douglas Vander Broek, DC (Chairperson)
Christine Chasek, LIMHP, LADC
Greg Gaden, EdD
Jeffrey L. Howorth
Jane Lott, RDH, BS
Robert Sandstrom, PhD, PT
John Tennity, DPM

Members Absent

Staff Present

Matt Gelvin
Ron Briel
Marla Scheer

I. Call to Order, Roll Call, Approval of the Agenda

Dr. Vander Broek called the meeting to order at 9:00 a.m. The roll was called; a quorum was present. He welcomed all attendees and asked the committee members to introduce themselves. The agenda and Open Meetings Law were posted and the meeting was advertised online at http://dhhs.ne.gov/Pages/reg_admcr.aspx. The committee members unanimously approved the agenda for the first meeting.

The committee members unanimously agreed to adopt the following method of notifying the public about the date, time, and content of their meetings:

- Agendas for these meetings are posted on the Credentialing Review component of the Department of Health and Human Services website, and can be found at http://dhhs.ne.gov/Pages/reg_admcr.aspx
- Agendas for these meetings are posted on the Licensure Unit bulletin board located on the northeast corner of the first floor of the Nebraska State Office Building near the receptionist's area of the Licensure Unit.

II. Scheduling an Additional Meeting

The committee members selected Tuesday, January 5, 2015 as the date of their third meeting. Dr. Vander Broek commented that the committee is going to need a meeting date in January in order to complete their work in time for the Board of Health to review the proposal during its January 25, 2015 bimonthly meeting.

III. Orientation of the Committee Members to the Credentialing Review Program

Dr. Vander Broek introduced the program staff for the purpose of orienting the committee members to the Credentialing Review Program. Mr. Briel conducted the orientation. A copy of this presentation was made available to the committee members at the beginning of the meeting. During his presentation Mr. Briel described the plan for an expedited review devised by Program staff to satisfy the request for such an expedited review from Senator Kathy Campbell, Chairperson of the Legislature's Health and Human Services Committee.

IV. Presentation of the Application by the Applicant Group

Casey Glassburner, CST; Laura Stallings, CST; Cynthia Kreps, CST; and Catherine Sparkman, Director of Government and Public Affairs for the Association of Surgical Technologists and Surgical Assistants came forward to speak on behalf of the surgical technology applicant group.

Ms. Glassburner informed the committee members that her group is seeking licensure for all surgical technologists who satisfy the educational and training standards defined in their proposal. Ms. Glassburner commented that 436 surgical technologists have sat for the certification examination, but that there are certainly more surgical technologists than this, perhaps as many as 800 or 900, which is just a guesstimate. She went on to state that the proposal includes a grandfathering period for all currently practicing surgical technologists to last one year after the passage of the act by the Legislature. The proposed licensing act would adopt the current certification examination used by the profession's national certifying body as the official licensing examination for surgical technology licensure for the State of Nebraska. Ms. Glassburner commented that one of the reasons for pursuing licensure is to find a means of dealing with the restrictive impact of the 1898 court case ***Howard Paul versus the State of Nebraska*** which states that physicians cannot delegate complex medical procedures to any unlicensed personnel. Licensing surgical technologists would satisfy the requirement for such delegation by a physician, thereby greatly improving access and efficiency of procedures in the surgical suite.

Ms. Kreps commented on the vital role surgical technologists have in maintaining a 'sterile field' in the surgical suite. She commented on how surgical technologists assist RNs and physicians in maintaining a sterile field during surgical procedures. Supervision of surgical technologists is provided by RNs, while physician surgeons do delegate some procedures to them as well.

Ms. Stallings commented on matters pertinent to the education and training of surgical technologists, informing the committee that there are two schools in Nebraska that provide surgical technology education and training programs, and that these are Southeast Community College in Lincoln, and Nebraska Methodist College in Omaha. Ms. Stallings went on to state that there is no evidence to show any connection between licensing surgical technologists and increased salary costs for their services.

V. Questions by the Committee Members

Dr. Vander Broek asked the applicants for the source of their assertion that there 436 surgical technologists have sat for the certification examination. Ms. Glassburner responded that their national organization provided this information to them. Dr. Vander Broek then asked the applicants what the minimum educational requirement is for qualifying to take this examination. Ms. Glassburner responded by stating that one must complete the requisite education and training curriculum for surgical technology to qualify to take this examination. She continued her comments by stating that some hospitals require completion of the certification program to work in their facilities, but that other hospitals do not have such a requirement.

Dr. Vander Broek asked the applicants whether there is any evidence of harm associated with the services of surgical technologists. Ms. Glassburner responded that the current unregulated state of surgical technologists makes it difficult to gather this kind of information about them. However, there are concerns about the knowledge and skills of those surgical technologists who have come into the profession vis-à-vis 'OJT'. The education and training of these providers is neither as complete nor thorough as is that of those who have completed the certification program.

Ms. Chasek expressed concern about those surgical technologists who were once certified but who have since allowed their certification to lapse. Ms. Chasek also expressed concern about the quality of the services provided by those who have only 'OJT' training to provide the services in question. Ms. Glassburner responded that there are a wide range of competencies among those 800 or 900 persons providing the services in question including those who have achieved a degree in surgical technology but who have not sat for the examination, as well as those who have sat for the examination but failed to pass it. Current law neither requires completion of course work nor the passing of a test in order to work as a surgical technologist. However, some hospitals require that their surgical technologists sit for the certifying examination, but it doesn't matter if they pass it or not.

Dr. Sandstrom asked the applicants whether or not some kind of facility credentialing might be a viable alternative to their current proposal. Ms. Glassburner responded that her group broached this idea with Nebraska Hospital Association representatives and were told that this would be too costly for hospitals to do. Ms. Glassburner added that this approach could not address the physician delegation problem stemming from the 1898 court case anyway. Dr. Sandstrom expressed skepticism regarding the willingness of the State to shut down surgical services that do not strictly conform to this court ruling from 117 years ago. Dr. Tennity expressed agreement with Dr. Sandstrom's comment in this regard.

Mr. Ben Greenfield, a Licensed Perfusionist, commented that from what he has observed vis-à-vis the surgical first assistant issue, the State has shown that it is willing to shut down surgical services that do not conform to the aforementioned ruling, and that concerns that this might happen, even as regards surgical technology services, should not be rejected out of hand. Ms. Glassburner commented that advice that her group has received from Department legal staff indicates that Nebraska does not make a distinction between specific surgical procedures, on the one hand, and the practice of medicine, on the other. In other words all delegable acts are considered part of the practice of medicine.

Dr. Gaden expressed concerns about the one-year grandfathering provision in the applicant's proposal, commenting that some who have submitted testimony in writing have advocated a two-year grandfathering provision instead. He then asked the applicants if they would be willing to make such a change in their proposal. Ms. Glassburner indicated that this is something her group could accept.

Dr. Vander Broek asked the applicants why registration would not address their concerns. Ms. Glassburner responded that registration could not address issues pertinent to the delegation of surgical procedures by physicians to unlicensed providers in the surgical suite.

VI. Presentations by Opponents of the Applicants' Proposal and Committee Questions

Jay Slagle, a representative of both the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers, testified in opposition to the proposal. Mr. Slagle informed the committee members that surgery centers are the second largest employers of surgical technologists in Nebraska. He stated that the current surgical technology proposal fails to satisfy the statutory criteria for initial credentialing in Section 71-6221 of Nebraska Revised Statutes which is the statute defined the Credentialing Review Program, specifically criterion one and criterion two. He went on to state that no data suggests that patients are receiving substandard care under the current practice situation. Under the current practice situation surgical technologists work under the supervision of licensed registered nurses or physicians. He went on to state that the applicants argue that the 1898 court case ***Howard Paul versus the State of Nebraska*** has had the effect of prohibiting physicians from delegating to unlicensed personnel, and that they are attempting to remedy this situation by licensing surgical technologists. Instead, he argued, why not seek to find a way to allow physicians to delegate to unlicensed personnel?

Mr. Slagle went on to state that the surgical technology proposal would create economic hardship for the public. The proposal would incur a wide range of additional costs including costs associated with taking courses to qualify for a licensing examination, taking a licensing examination, the licenses per se, licensure renewals, and continuing education. The proposal would also likely drive up salary costs. Because of barriers to entry into the profession associated with the costs of getting licensed fewer people will seek to become surgical technologists. This in turn will drive up salary costs given steady or increased demand for their services.

Bruce Rieker, a representative of the Nebraska Hospital Association (NHA), also spoke against approval of the proposal, citing the likelihood of increased cost of services as the reason for his opposition. Mr. Rieker responded to applicant assertions that there is no evidence of any connection between licensing surgical technologists and increased costs of surgical technology services by stating that to date there are no states that license these professionals.

Mr. Rieker stated that minimum competencies in surgical technology services can be maintained without the need for licensure. He added that the registration component in NHA's 2014 surgical first assistant's proposal would be a much less costly means of addressing the regulatory needs of surgical technology than licensure. Licensing surgical technologists would also create confusion regarding supervisory of surgical technology services. Who would supervise them if they were licensed, nurses or physicians? Registering them would not create such concerns.

VII. Additional Questions by Committee Members

Dr. Sandstrom commented that the applicant group needs to find more general language to articulate their scope of practice than that which is currently being used to articulate their scope of practice. He went on to state that the current wording is far too detailed and is little more than a laundry list of procedures rather than an articulation of a concept for a field of practice, which is what a scope of practice should be. He went on to state that the current wording is so specific that every time there is a change in technology or a change in surgical procedures the practice act would have to be opened to update the scope of practice.

VIII. Comments from the Public

Ben Greenfield commented that lack of clarity regarding what exactly is meant by, and what exactly constitutes, 'closure' is something the committee members are going to have to struggle with during the course of this review.

IX. Future Meeting Dates

The following meeting dates and times were selected by the committee members:

- December 22nd, 2015: 9:00 a.m. to 3:00 p.m.
- January 5th, 2016: 9:00 a.m. to 3:00 p.m.

X. Additional Public Comment

There were no public comments at this time.

XI. Next Steps

The next step in the review process on this proposal is to continue examining the proposal keeping the four statutory criteria for initial credentialing in mind. Additionally, the committee members will be planning for their public hearing which is likely to be held during the meeting on January 5, 2016. Pursuant to these next steps, Program staff encouraged the committee members to submit questions in advance of the upcoming December 22, 2015 meeting so that interested parties can begin to work on their responses in advance of this aforementioned meeting.

XII. Other Business and Adjournment

There being no further business, the committee members unanimously agreed to adjourn the meeting at noon.